ATTACHMENT I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT DISTRICT OF NEW YORK

WIRELESS CONSUMERS ALLIANCE, INC., HENRY HOCHMAN, MARY ETOMI-ELUMA, LISSETTE VELEZ, TERESITA ANDUJAR, and SAMUEL MALDONADO, on behalf of themselves and others similarly situated,

Plaintiffs,

-against-

AT&T CELLULAR SERVICES, INC., AT&T WIRELESS PCS INC., AT&T WIRELESS PCS, LLC, AT&T WIRELESS SERVICES INC., AT&T WIRELESS SERVICES OF NEW JERSEY, INC., SPRINT CORPORATION, GTE SPRINT COMMUNICATIONS CORPORATION, SPRINT COMMUNICATIONS COMPANY, L.P., VERIZON COMMUNICATIONS INC., VERIZON WIRELESS SERVICES, LLC, VERIZON WIRELESS (VAW) LLC, VERIZON NEW YORK INC., VOICESTREAM WIRELESS CORPORATION, and DEUTSCHE TELEKOM, INC.,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT – JURY TRIAL DEMANDED

Plaintiffs, by their attorney, make the following allegations pursuant to the investigation of their counsel and based upon information and belief, except as to

allegations specifically pertaining to themselves and their counsel, which are based on personal knowledge.

Nature Of The Action

1. This class action is brought on behalf of persons who have purchased cellular or PCS telephone services from the four major carriers within Cellular Market Area 001 (CMA001), comprising the following counties: Bronx NY, Kings NY, New York NY, Queens NY, Richmond NY, Putnam NY, Rockland NY, Westchester NY, Bergen NJ, Nassau NY, Suffolk NY, Essex NJ, Morris NJ, Somerset NJ, Union NJ, Hudson NJ, and Passaic NJ.

2. There are four facilities-based carriers of cellular and/or PCS services in CMA001: AT&T Wireless, Sprint PCS, Verizon Wireless, and Voicestream (collectively, "Defendants").

3. Defendants market handsets and cellular/PCS services through tying arrangements whereby subscribers are required to purchase a handset only from their carrier or their carrier's authorized sales representatives. Defendants program these handsets to prevent the porting of handsets or telephone numbers between their respective networks, thereby restraining subscribers from switching carriers, restraining competition among and between carriers, and causing artificially elevated market prices for cellular and PCS services and handsets.

4. Plaintiffs seek to recover monetary damages for such artificially elevated market prices under Section 1 of the Sherman Act, 15 U.S.C. § 1, and also seek injunctive and declaratory relief against the anticompetitive practices identified herein.

Jurisdiction And Venue

5. This action is brought pursuant to Section 1 of the Sherman Act, 15 U.S.C. § 1.

6. The jurisdiction of this Court is predicated on 28 U.S.C. § 1331.

7. All Defendants transact business in this District. Venue is proper in this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

Parties

8. Plaintiff Wireless Consumers Alliance, Inc. ("WCA") is a § 501(c)(3) California not-for-profit corporation. WCA is an independent organization formed in 1995 to promote and serve the interests of consumers of wireless services.

9. Plaintiffs Henry Hochman, Mary Etomi-Eluma, Lissette Velez, Teresita Andujar, and Samuel Maldonado are consumers who have purchased wireless phone services and handsets from one or more Defendants within CMA001 within the past four years.

10. Defendant AT&T Cellular Services, Inc. is a Delaware Corporation with its principle place of business in New York, NY.

11. Defendant AT&T Wireless PCS Inc. is a Delaware corporation with its principle place of business in Redmond, WA.

12. Defendant AT&T Wireless PCS, LLC is a Delaware limited liability company with its principle place of business in New York, NY.

13. Defendant AT&T Wireless Services, Inc. is a Delaware corporation with its principle place of business in Redmond, WA.

14. Defendant AT&T Wireless Services Of New Jersey, Inc. is a New Jersey corporation with its principle place of business in Redmond, WA.

15. Defendant Sprint Corporation is a Kansas corporation with its principal place of business in Overland, KS.

16. Defendant GTE Sprint Communications Corporation is a Delaware Corporation with its principle place of business in Irving, TX.

17. Defendant Sprint Communications Company, L.P. is a Delaware limited partnership with its principle place of business in Irving, TX.

18. Defendant Verizon Communications, Inc. is a Delaware corporation with its principal place of business in New York, NY.

19. Defendant Verizon Wireless Services, LLC is a Delaware limited liability company with its principal place of business in New York, NY.

20. Defendant Verizon Wireless (VAW) LLC is a Delaware limited liability company with its principal place of business in Rockland, NY.

21. Defendant Verizon New York Inc. is a New York corporation with its principal place of business in New York, NY.

22. Defendant Voicestream Wireless Corporation is a Delaware Corporation with its principle place of business in Bellevue, WA.

23. Defendant Deutsche Telekom, Inc. is a Delaware corporation with its principle place of business in New York, NY.

Facts

Cellular/PCS Telephony

24. Cellular/PCS telephone handsets, commonly referred to as cellular phones or cell phones, use a radio signal instead of wire to connect telephone

calls. Cell phones emit radio signals on a specific frequency or channel to a nearby cellular base station. The base station -- which consists of one or more antennas, transmitters, receivers, and other radio equipment -- communicates with the handset and connects calls between the handset and the public switched telephone network (PSTN).

25. Mobile telephony systems use particular bands of the radio frequency spectrum designated for such use by the Federal Communications Commission (FCC).

26. Mobile telephony systems are sometimes described as "cellular" because they operate by dividing a large geographical service area into cells and assigning the same radio frequency channels to multiple, nonadjacent cells. A base station consisting of low-power radiotelephone and control equipment serves each cell. Each cell is allocated a set of voice channels and a control channel with adjacent cells assigned different channels to avoid interference. A single base station can serve a geographic area as small as a single building or as large as several square miles. This system of using low power transmitters to serve small cells permits efficient use of the spectrum because it permits frequencies to be reused in nonadjacent cells without interference.

27. As a caller moves about the area, the base station monitors the strength of the signal between the handset and base station. If the handset moves far enough away from the base station and the signal grows weak, the base station hands-off the call to a different channel on another base station, thus allowing the call to continue.

28. Each base station is connected to a Mobile Telephone Switching Office (MTSO) by wireline or microwave links. The MTSO controls the switching between the PSTN and the cell site for all wireline-to-mobile and mobile-to-wireline calls. The MTSO also processes mobile unit status data received from the cell-site controllers, switches calls to other cells, processes diagnostic information, and compiles billing statistics.

The Creation Of The Mobile Telephony Industry

29. The cellular mobile telephony industry was created in 1981 when the FCC allocated 40 Megahertz (Mhz) of spectrum in the 800 Mhz frequency band for cellular service.

30. For licensing purposes, the FCC designated 734 geographic markets: 306 Metropolitan Statistical Areas (MSAs) defined by counties according to the 1980 census, and 428 Rural Service Areas (RSAs) comprising the remaining counties that were not included in the MSAs. These 734 geographic markets are sometimes referred to as Cellular Market Areas (CMAs).

31. In each CMA, the FCC divided the 40 Mhz of spectrum that had been allocated into two blocks of 20 Mhz -- the "A" block and the "B" block. Block A was initially licensed to an entity unaffiliated with the local telephone company. Block B was initially licensed to an affiliate of the local telephone company.

32. Cellular service to the public began in late 1983. In 1986, because demand for the service was greater than expected, the FCC allocated an additional 10 Mhz of spectrum to cellular service, for a total of 50 Mhz, or 25 Mhz to each carrier.

The Early Duopoly Markets And The FCC's Bundling Rule

33. Throughout the 1980s and early 1990s, the mobile telephony market was characterized by hundreds of local duopolies. Each cellular system was based on an analog standard called AMPS (Advanced Mobile Phone System). The AMPS standard ensured that all mobile phones would work anywhere that a cellular system was in operation, and permitted subscribers to roam from one cellular service area to the next and still obtain service with minimal difficulty.

34. Mobile phones used on these AMPS systems were capable of operating over the entire spectrum allocated for cellular use. These phones typically included a feature called A/B switching, which permitted the phone to be programmed for use with either or both carriers in the duopoly market. Such phones could be programmed to communicate with the alternative carrier in the event that the subscriber was dissatisfied with carrier A and changed services by subscribing to carrier B, or vice versa. Such phones could also be programmed to seek the carrier B signal in the event that the subscriber was in a location in which a signal from carrier A was not available, or vice versa.

35. The market for the sale of analog wireless phones was competitive and unregulated. Small manufacturers were able to compete with major telephone equipment producers, and by 1988 there were some 25 manufacturers of analog phones. With relatively low barriers to entry, the number of manufacturers was growing annually.

36. Throughout the 1980s and early 1990s wireless carriers marketed phones through "bundled" deals under which discounted wireless phones were sold to consumers packaged with a service contract, typically requiring the

subscriber to purchase a minimum amount of wireless airtime over a twelve-month period.

37. Due to concerns about the potential anticompetitive impact of such "bundling" arrangements, in 1992 the FCC clarified its policy with respect to the bundling of wireless phones and services. The FCC stated its "concern that customers have the ability to choose their own CPE [handset] and service packages to meet their own communication needs and that they not be forced to buy unwanted carrier-provided CPE in order to obtain necessary services." In The Matter Of Bundling Of Cellular Customer Premises Equipment And Cellular Service, CC Docket No. 91-34, 1992 WL 689944 (F.C.C. June 10, 1992), at ¶ 6 (hereinafter "1992 F.C.C. Bundling Ruling").

38. The FCC also noted, however, that there were "low barriers to entry" in the market for handsets, "new manufacturers [were] continuously entering the market", and consumers were able to choose from "more than 28 brands of cellular telephones". 1992 F.C.C. Bundling Ruling ¶ 8.

39. The FCC also noted in 1992 that there was "no evidence that cellular carriers refuse to provide service to customers that purchase another brand of CPE". 1992 F.C.C. Bundling Ruling ¶ 15. Given the geographically fragmented nature of the cellular markets, individual local cellular companies were not able to restrict competition in the CPE market, which was characterized by manufacturers selling directly to subscribers and also selling to hundreds of local carriers in geographically fragmented markets.

40. Given these market conditions, the FCC permitted the carriers to continue to offer wireless phones and services as a bundled package, provided that

wireless service was also offered separately on a nondiscriminatory basis. In other words, the FCC permitted wireless carriers to bundle handsets and service on the condition that the carriers offer service regardless of whether the subscriber purchased a bundled phone from the carrier or an unbundled phone from a source other than the carrier.

The Introduction Of PCS And Digital Cellular Service

41. Due to the growing popularity of mobile telephone service and the desire to see more competition and more alternatives than were available in the cellular duopoly markets, in 1994 the FCC allocated 120 Mhz of spectrum in the 1900 Mhz band to broadband PCS, an acronym for "Personal Communications Services".

42. The FCC licensed the PCS spectrum in blocks through auctions or, in a few instances, by awarding blocks of spectrum to companies that were deemed "pioneers" in the development of PCS technology. Like the prior cellular licenses, these PCS licenses were allocated by geographic market areas.

43. PCS and cellular networks are both "cellular" systems in the sense that the radio technology used divides geographic areas into small cells designed to allow for frequency reuse in nonadjacent cells. PCS differs from traditional cellular service only in that PCS systems operate in the 1900 Mhz band and have used a digital-only format from inception.

44. Digital phones use the same radio spectrum as analog, but an analog signal cannot be compressed or manipulated as easily as a digital signal. Digital phones convert the caller's voice into binary information (1s and 0s) and then compress it. This compression makes more efficient use of spectrum because it

allows between three and 10 digital wireless phone calls to occupy the space of a single analog call. Digital networks are therefore more efficient and more profitable than their analog predecessors.

45. PCS service became available to the public in 1997. The addition of PCS carriers in many markets converted the structure of those markets from duopolies to oligopolies.

46. Concurrent with the development and introduction of digital PCS, many analog cellular carriers began to convert portions of their networks to digital signaling technologies to take advantage of the spectral efficiencies inherent in such technologies and the ability to offer advanced digital services such as text messaging.

Industry Concentration

47. Although mobile telephony carriers hold licenses for particular geographic areas (or CMAs), an individual carrier may hold licenses in many areas. Thus, while a handful of minor local or regional carriers remain, the industry has come to be dominated by five carriers who have spent billions of dollars to acquire rival carriers and licenses to establish nearly national footprints. These five nationwide carriers, AT&T Wireless, Cingular Wireless, Sprint PCS, Verizon Wireless, and Voicestream, control approximately 80% to 85% of all mobile telephony subscribers in the United States.

48. Carriers may also hold licenses to multiple blocks of spectrum within a particular geographic area. Thus, in many CMAs, AT&T Wireless, Cingular Wireless, and Verizon Wireless hold overlapping licenses in the 800 Mhz and 1900 Mhz bands.

Marketing Of Mobile Telephones

49. The geographic market at issue in this action, CMA001, comprises the following counties: Bronx NY, Kings NY, New York NY, Queens NY, Richmond NY, Putnam NY, Rockland NY, Westchester NY, Bergen NJ, Nassau NY, Suffolk NY, Essex NJ, Morris NJ, Somerset NJ, Union NJ, Hudson NJ, and Passaic NJ.

50. There are four facilities-based carriers of cellular/PCS telephony services in CMA001: AT&T Wireless, Sprint PCS, Verizon Wireless, and Voicestream. (The fifth national carrier, Cingular Wireless, does not presently provide service in CMA001.) Verizon Wireless and AT&T wireless operate on the "A" and "B" blocks of the 800 Mhz band, respectively. AT&T Wireless, Verizon Wireless, Sprint PCS and Voicestream each hold licenses for spectrum in the 1900 Mhz band in CMA001.

51. In addition to these four facilities-based carriers, there are a small number of resellers who offer mobile telephony services to subscribers by purchasing airtime at wholesale rates from facilities-based providers and reselling it at retail prices. The largest of these resellers is WorldCom, Inc. The cumulative market share of resellers in CMA001 is negligible, however, as the market is dominated by the four facilities-based carriers.

52. The four facilities-based carriers in CMA001 each market mobile phones and services in essentially the same way. The carriers purchase mobile phone handsets from original electronics manufacturers (OEMs) such as Motorola, Nokia, or Panasonic. The carriers sell handsets to subscribers through tying arrangements in which the handset is tied to a standard form 12- or 24-month

service contract requiring the purchase of a minimum amount of airtime for the duration of the contract. These contracts provide for substantial early termination fees, which in some instances may exceed the value of the contract.

53. Sales of handset/services bundles are made by the carriers through their own retail outlets, and through quasi-independent retail sales agents who typically represent multiple carriers. An example of the latter is Radio Shack, which acts as a sales agent for both Verizon Wireless and Sprint PCS. Another example is Cellular Hut (www.cellhut.com). which has four locations in Manhattan, and acts as a sales agent for AT&T Wireless, Sprint PCS, Verizon Wireless, and Voicestream.

54. Though FCC rules require carriers to provide service on the same terms regardless of whether the subscriber purchased a bundled phone from the carrier or an unbundled phone from a source other than the carrier, none of the four carriers in CMA001 do so. Instead, each carrier requires a subscriber to purchase a mobile phone from that carrier or its authorized retail sales agent as a condition of obtaining service.

55. The carriers reinforce this tying arrangement and further restrict competition by the manner in which they program the mobile phone handsets. Each handset is programmed with three codes: an electronic serial number (ESN), a mobile identification number (MIN), and a system identification code (SID). The ESN is a unique 32-bit number programmed into the phone when it is manufactured. The MIN is a 10-digit number derived from the phone number assigned to the handset by the carrier. The SID is a unique 5-digit number that is assigned to the wireless service provider by the FCC. While the ESN is hard-wired into the phone by the

manufacturer, the MIN and SID are reprogrammable and could theoretically be reprogrammed to change the carrier and assigned telephone number used with a particular handset.

56. The carriers program the handsets to restrict access to the SIDs. A handset programmed by AT&T Wireless, for example, will have an SID table programmed in such a manner that the handset will be able to communicate only with networks broadcasting SIDs assigned to AT&T Wireless or an AT&T affiliate.

57. The carriers also program each handset with an MIN-number that is identical to the dialable telephone number (the "Mobile Directory Number" or MDN) assigned to that handset and subscriber. By programming handsets in this manner, the Defendants ensure that MDNs cannot be ported out of their network to a competing carrier. Thus, a subscriber cannot switch carriers without changing telephone numbers, which for many subscribers is a substantial disincentive to switching.

58. The carriers lock the handsets to prevent reprogramming of the SID table and MIN/MDN by using an encrypted 11-digit hex code referred to as a secure authentication key, or "A-Key". The A-Key ensures that handsets initially programmed by the carrier cannot be reprogrammed by others, thus preventing handsets from being reprogrammed for use on competing networks. The effect of this programming and locking of phones is that subscribers wishing to switch to another carrier cannot continue to use the phone and must instead bear the cost of purchasing a new one. For many subscribers this is a substantial disincentive to switching.

59. Since the five national carriers purchase, program and sell every handset provided to their subscribers, they buy 80% to 90% of all handsets

from the OEMs. These carriers thus exert nearly total control over the market for handsets. They have the power to dictate and do dictate to OEMs the features to be incorporated into handsets, and the terms on which handsets will be distributed.

60. Each carrier is a member of the Cellular Telephone & Internet Association (CTIA), which is an industry group representing various segments of the mobile telephony industry.

61. The carriers have conspired and agreed to impose standards for handsets that allow the handsets to be programmed and locked as described above. The carriers enforce this agreement through, for example, the CTIA Certification Program, which was designed to certify that handsets manufactured by OEMs meet the specifications required for the carriers to program and lock them for use on their respective networks, and to ensure that MDNs cannot be ported out of their networks. To this end, the carriers have conspired and agreed to market only handsets that have been certified by the CTIA.

62. The carriers have exerted their control over the handset market to prevent the development of technology that would make it easier to port a handset from system to system. For example, the carriers have prevented the development of handsets capable of utilizing multiple digital signaling protocols. There are three digital signaling protocols used on various cellular/PCS networks: CDMA, TDMA, and GSM. Though it would be a trivial technological exercise to manufacture a mobile phone compatible with multiple digital signaling protocols, the carriers have prevented such a phone from reaching consumers. By contrast, when carriers began utilizing both analog and digital networks, and spectrum in both the 800 Mhz and 1900 Mhz bands, they ensured that "dual-band", "dual-mode" and even "tri-mode"

handsets compatible with each of these networks quickly reached the market. Such phones are now ubiquitous. On the other hand, phones compatible with multiple digital signaling protocols do not serve the commercial interest of any major carrier. No such phone has been "certified" by the CTIA, and none has reached the market.

63. The carriers' dominance of the handset market, achieved by virtue of the tying arrangements described above, has greatly reduced to number of OEMs manufacturing handsets. In 1992 there were some 25 manufacturers selling 28 brands of handsets, with low barriers to entry and the number of manufacturers continuing to grow annually. In 2002, there are approximately half as many handset manufacturers. The need to market the handsets through the carriers presents an absolute barrier to entry into the handset market. Indeed, since the carriers have essentially subsumed the handset market into the market for cellular services, there is no longer a distinct functioning market for handset sales to consumers.

64. The carriers program and market handsets as described above for the purpose of maximizing the costs associated with switching carriers and restraining competition among carriers. Since the mobile telephony market is characterized by very low marginal costs, the consumers' switching costs largely determine the rates that can be charged by the carriers. By ensuring that a subscriber wishing to change carriers must also change his or her telephone number, must purchase another handset, and must agree to a 12- or 24-month service contract, the carriers have created a floor below which switching costs cannot fall, and have effectively fixed a floor for subscription prices as well.

65. The marketing and sales practices employed by Defendants unlawfully restrain competition and harm consumers by restricting consumers' ability

to use handsets sold by actual or potential competitors. Once a consumer agrees to subscribe to a particular carrier, that consumer must use only handsets provided that carrier and cannot switch to other handsets manufactured or marketed by competitors or potential competitors of the carrier.

66. Defendants' practice of restricting the brands and models of handsets that may be offered by their dealers and sales agents further restricts competition in the market for handsets.

67. The anticompetitive effect that these marketing practices have on the market for handsets is evident from the substantial reduction in the number of firms that manufacture and supply handsets.

68. The anticompetitive effects of these marketing practices are also evident from the lack of innovation and improvements in the market for handsets. The stifling of competition has prevented many safety features and improvements in technology which have been developed in recent years from being incorporated into handsets. For example, technology which would permit a handset to access the strongest signal available when making an emergency 911 call, instead of blocking communication with competitors' networks, has been held back from commercial deployment. In a competitive market, such innovations would be made available to consumers. In the absence of competition, the carriers are able to keep technology that does not serve their short-term commercial interests from reaching the market despite its value to consumers.

69. The anticompetitive effects of these marketing arrangements on monthly subscription prices are evident from industry price trends. From the inception of the wireless industry in the early 1980s until 1998, pricing steadily

declined, as the subscription base grew and there were more subscribers to share the fixed costs of maintaining the wireless networks. According to published reports, average monthly subscription charges for wireless services dropped steadily from $81 per month in 1990 to $40 per month in 1998.

70. After 1998, however, with the advent of PCS and digital signaling, the industry concentration described above, and the tying arrangements imposed by the Defendants, the average monthly subscription charge began to increase, climbing 12% from 1998 through 2000, to approximately $45 per month. See Carolyn E. Mayer, "Griping About Cellular Bills", Washington Post, February 28, 2001.

71. The 1998 turnaround in pricing coincided with the shift from analog to digital wireless services and the introduction of additional carriers in the PCS bands. Under competitive market conditions, one would expect that digital service should lead to a reduction in subscription charges, since the digital networks are more efficient, can handle more subscribers per cell and per channel, and the subscription base in 1998 was larger than it had been at any time before. One would also expect that the evolution of the market from duopoly to oligopoly would lead to a reduction in subscription charges.

72. The shift to more efficient digital networks and a larger subscriber base has not lead to a reduction in average monthly subscription charges, but to an increase in costs to consumers. This is attributable to the reduction in competition achieved by the marketing practices of the Defendants, who collectively dominate the wireless industry.

Class Action Allegations

73. Plaintiffs bring this action as a class action for equitable, injunctive and declaratory relief as well as monetary relief pursuant to Federal Rule of Civil Procedure Rule 23 on behalf of a class consisting of persons who have purchased mobile telephony services within CMA001 from any Defendant within the past four years (the "Class").

74. The Court can define the Class and create subclasses as may be necessary or desirable to adjudicate the common issues and claims of the Class members if, based on discovery of additional facts, the need arises.

75. The individual Plaintiffs named in this complaint are members of the Class they seek to represent. The WCA is an advocacy group committed to advancing the interests of the Class through this litigation and otherwise, and is itself a member of the class insofar as the class seeks injunctive and declaratory relief.

76. The members of the Class referred to above are readily ascertainable but are so numerous that joinder is impracticable. The exact number and names of the members of the Class are presently unknown to Plaintiffs, but can be ascertained readily through appropriate discovery. Plaintiffs believe that there are at least several million members of the Class, whose names and addresses may be located readily through discovery, upon examination of the books and records of Defendants.

77. There are questions of law and fact common to the Class including, but not limited to (1) whether Defendants conspired and agreed to create certification standards for handsets designed to ensure that handsets could not be ported across networks, (2) whether Defendants conspired and agreed to create

certification standards for handsets designed to ensure that MDNs could not be ported across networks, (3) whether Defendants conspired and agreed to program handsets to ensure that handsets could not be ported across networks, (4) whether Defendants conspired and agreed to program handsets to ensure that MDNs could not be ported across networks, (5) how the relevant markets and sub-markets should be defined, (6) whether the tying of handsets and mobile telephony services involves two separate products, (7) whether these tying arrangements affect a "not insubstantial amount of commerce", (8) whether the substantiality of commerce affected should be analyzed individually for each Defendant or collectively in light of Defendants' concerted action, (9) whether these tying arrangements and other marketing practices employed by Defendants restrained competition, (10) whether the tying arrangements and other marketing practices employed by Defendants caused artificially elevated market prices for mobile telephony services, and (11) whether the tying arrangements and other marketing practices employed by Defendants caused artificially elevated market prices for handsets.

78. The claims of the named plaintiffs are typical of the claims of the Class in that the named plaintiffs purchased wireless phone services and handsets from one or more Defendants at elevated market prices.

79. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class and common issues predominate.

80. Plaintiffs have retained counsel competent and experienced in complex class actions.

81. Notice of this class action can be provided to class members by techniques and forms similar to those customarily used in consumer class actions,

such as by published notice, internet notice, or first class mail, or combinations thereof, or by other methods suitable to this Class of plaintiffs.

82. Class certification is appropriate because Defendants have acted, or refused to act, on grounds generally applicable to the Class, making class-wide equitable, injunctive, declaratory, and monetary relief appropriate. In addition, the prosecution of separate actions by or against individual members of the Class would create a risk of incompatible standards of conduct for Defendants and inconsistent or varying adjudications for all parties. A class action is also superior to other available methods for the fair and efficient adjudication of this action.

Count I

Tying

83. Paragraphs 1 through 82 of this Complaint are incorporated herein by reference as if fully set forth herein.

84. Mobile telephony services and handsets are two separate and distinct products or services which are marketed and sold by Defendants through the tying arrangements described above.

85. By virtue of their control over mobile telephony networks, Defendants have sufficient economic power in the markets for wireless services and handsets to restrain appreciably competition in those markets.

86. These tying arrangements are imposed by each Defendant upon millions of consumers within CMA001, affecting a "not insubstantial" amount of commerce.

87. These tying arrangements have anticompetitive effects which have harmed Plaintiffs by restricting consumer options and artificially elevating

prices for wireless phone service and handsets in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

Count II

Price Fixing

88. Paragraphs 1 through 82 of this Complaint are incorporated herein by reference as if fully set forth herein.

89. Defendants have conspired and agreed to market and program handsets as described above to drive up consumers' costs associated with switching carriers, thereby increasing the prices carriers can charge for service, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

Count III

Market Allocation

90. Paragraphs 1 through 82 of this Complaint are incorporated herein by reference as if fully set forth herein.

91. Defendants have conspired and agreed to market and program handsets as described above to prevent the porting of handsets and MDNs across networks.

92. Each Defendant has acted on this conspiracy and agreement by marketing and programming handsets sold to its subscribers as described above.

93. This arrangement has the effect of allocating customers among the various carriers and restraining competition for the provision of handsets and services to such customers.

94. This market allocation scheme is a restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

Relief Demanded

95. Wherefore Plaintiffs pray for relief as follows:

(a) That this action be certified as a class action on behalf of the proposed class of persons who have purchased wireless phone services and handsets from any Defendant within CMA001 (the "Class");

(b) That Defendants be permanently enjoined from the anticompetitivie marketing practices identified herein;

(c) That Defendants be enjoined from enforcing subscriber contracts which unfairly restrain competition.

(d) That Plaintiffs and the Class be awarded monetary damages for the injuries caused by Defendants' anticompetitive marketing and sales practices.

(e) That such damages be tripled under 15 U.S.C. § 15(a).

(f) That Plaintiffs and the Class be awarded reasonable attorneys' fees, expenses and costs associated with this action; and

(g) For such further relief as this Court deems necessary, just or proper.

Demand For Jury Trial

96. Plaintiffs demand a trial by jury.

By_____
Scott A. Bursor (SB-1141)

LAW OFFICES OF SCOTT A. BURSOR
20 West 20th Street, 2nd Floor
New York, NY 10011-4213
(212) 822-8898 (tel)
(212) 822-8577 (fax)
Attorney for Plaintiffs